IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WA.No. 2376 of 2007

(AGAINST THE JUDGEMENT IN WPC.32539/2006 Dated 26/09/2007)

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APPELLANT: PETITIONER IN WP:

M/S.KANCOR INGREDIENTS LIMITED,
KANCOR ROAD,
ANGAMALLY SOUTH-683 573,
REPRESENTED BY ITS VICE PRESIDENT (CORPORATE FINANCE),
SRI.V.MURALEEDHARAN.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS: RESPONDENTS IN WP:

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1. THE GENERAL MANAGER,
   DISTRICT INDUSTRIES CENTRE,
   M.G.ROAD,
   ERNAKULAM.

2. THE DIRECTOR OF INDUSTRIES & COMMERCE,
   GOVERNMENT OF KERALA,
   SECRETARIAT,
   TRIVANDRUM.

3. THE TAHSILDAR,
   ALUVA.

4. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY,
   GOVERNMENT SECRETARIAT,
   TRIVANDRUM.

5. MOTHER'S AGRO FOODS PVT.LTD.,
   INDUSTRIAL DEVELOPMENT AREA,
   ANGAMALLY SOUTH,
   REPRESENTED BY ITS MANAGING DIRECTOR, MR.VARKEY PETER.

6. KERALA STATE POLLUTION CONTROL BOARD,
PATTOM POST,
TRIVNADRUM- 695004,
REPRESENTED BY ITS CHAIRMAN. (DELETED)

(The 6th respondent is deleted from the party array as per order dated 11-10-2007)

R1 TO R4 BY GOVERNMENT PLEADER SRI.SREEKRISHNAN
R5 BY ADV.SRI.N.N.SUGUNAPALAN (SR)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11/10/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2376 of 2007

Dated this the 11th day of October, 2007.

J U D G M E N T

H.L.Dattu, C.J.

The memo filed by the learned counsel appearing for the appellant is taken on record. In view of the memo, the appellant is permitted to delete the 6th respondent at his risk.

(2). Respondents 1 to 4 are represented by learned Government Pleader. The 5th respondent is represented by learned senior counsel Sri. N.N.Sugunapalan.

(3). This appeal is filed by M/s.Kancor Ingredients Limited, being aggrieved by the orders passed by the learned Single Judge in W.P.(C) No.32539 of 2006 dated 26th September, 2007. By the impugned order, the learned Judge has confirmed Ext.P32 order passed by the General Manager, District Industries Centre, Ernakulam dated 16-11-2006.

(4). When the matter was posted before the Court, we had made suggestion to the learned counsel appearing for the appellant. Pursuant to the suggestion so made by us, an affidavit is filed by the appellant. The affidavit reads as under:

> " I, J.J.Negandhi, aged 52 years, son of Jivandas, residing at 4A, B, Paul Abroa residency, Chittoor Road, Ernakulam, do hereby solemnly affirm and state as follows:-

1. I am the Executive Director of the Petitioner Company and as such I am conversant with the facts of the case and am able and competent to depose to the same.

2. I am in charge of the factory of the Appellant at Angamally with respect to which the issues in this case have arisen.

3. In the Writ Petition we had confined our relief during the course of arguments to be a reconsideration of the matter by the 2nd Respondent, Director of Industries. I do hereby solemnly affirm and state that in this Writ Appeal also the appellant is only seeking a final reconsideration by the 2nd Respondent of the entire issue. In particular the 2nd Respondent may hear all concerned and ascertain the views of the Pollution Control Board, the Spices Board (the concerned commodity Board) and other authorities concerned with this issue and take a final decision on the requirement of the disputed land as regards the Appellant's existing industry and its future requirements. On behalf of the appellant, I do hereby undertake that the final decision taken by the 2nd Respondent will be unconditionally accepted by the Appellant and shall not be called in question on any ground before any Court or authority. The Appellant will also comply with the said final decision in all respects.

It is therefore respectfully prayed that this Hon'ble Court may be pleased to take this affidavit on to the records in this case."

(5). Sri.N.N.Sugunapalan, learned counsel appearing for the 5th respondent/contesting respondent has no objection for some of the requests made in the affidavit. He would further submit that if Ext.P32 order is set aside by this Court and a direction is issued to the Director of Industries and Commerce to re-consider the matter after affording an opportunity of hearing to

the appellant and the contesting respondent, it would satisfy the interest of both the parties.

(6). Learned Government Pleader also has no objection to set aside Ext.P32 order passed by the General Manager, District Industries Centre, Ernakulam.

(7). Placing on record the affidavit filed by the appellant, in view of the concession shown by all the respondents, the following order:

ORDER

(i). The writ appeal is disposed of.

(ii). The affidavit filed by the appellant is taken on record.

(iii). The order passed by the General Manager, District Industries Centre, Ernakulam dated 16-11-2006 is set aside.

(iv). A direction is issued to the Director of Industries and Commerce, Government of Kerala, Secretariat, Trivandrum to re-consider Ext.P32 order, in accordance with law, after affording an opportunity of hearing to the appellant as well as the 5th respondent.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS